IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5398 of 1994

Between:

Smt. G.Venugopalamma,

W/o.Late Gurumurthy,

Gajuwaka, Visakhapatnam.

..... PETITIONER

AND

1. Government of Andhra Pradesh,

Represented by its Secretary, Revenue (U.G.III),

Secretariat, Hyderabad.

2. Special Officer and Competent Authority,

Urban Land Ceiling, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, Order or direction particularly a Writ in the nature of Certiorari by calling for the records in G.O.Ms.No.979, dated 5.10.1993 of the first respondent and by quashing the same and direct extension of such time as this Court may deem fit with such other conditions as this Court may decide.

For the Petitioner:DR.P.B.VIJAY KUMAR, Advocate
For the Respondents: GP FOR REVENUE

The Court Made the Following :

ORDER:

The petitioner's husband, Sri G.Gurumurthy, owned 1,012 Sq.mts in R.S.No.31/6, and 2,388 Sq.mts in R.S.No.32/3 of Gajuwaka Village in Visakhapatnam, which is urban vacant land governed by the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (for short, the Act). After considering his declaration filed under Section 6 of the Act, he was declared to be surplus holder in respect of these lands. He approached the Government, first respondent herein, for exemption under Section 20 of the Act for construction of shopping centre and cinema theatre. By order in G.O.Ms.No.150, dt.23.1.1979, first respondent exempted 3,400 Sq.mts in R.S.Nos.31/6 and 32/3 of Gajuwaka Village in Visakhapatnam urban agglomeration from the provisions of the Act. As per the conditions imposed in exemption orders, Gurumurthy was directed to utilize the land for the purpose of construction of cinema theatre and shopping center within a period of three years from the date of grant of exemption. Any failure to comply with the conditions would entail in cancellation of exemption order. Gurumurthy died in the year 1983. By the impugned order in G.O.Ms.No.979, Revenue (UC.III) Department, dt.5.10.1993 the exemption granted in favour of Gurumurthy was withdrawn on the ground that Gurumurthy violated conditions laid down in the exemption order and that petitioner has not utilized the exempted land for construction of cinema theatre even after expiry of the time stipulated in the said order. This Court admitted the Writ Petition on 19.4.1994 and by order of even date in W.P.M.P.No.6583 of 1994 directed *status quo* to be maintained with regard to possession.

Second respondent has filed a counter affidavit opposing the Writ Petition. It is stated that since the land was required for public purpose for laying road by

Visakhapatnam Urban Development Authroity (VUDA), on request of VUDA, the Joint Collector cancelled the permission granted to Gurumurthy for construction of cinema theatre. As petitioner's husband, and after his death petitioner failed to comply with the conditions stipulated in the exemption order, and not completed construction within stipulated period, the Government after giving reasonable opportunity and after considering the explanation given to the show cause notice, withdrew the exemption by impugned order. It is further stated that petitioner is not entitled to use the land for any other purpose as exemption was specifically granted for construction of cinema theatre and therefore withdrawing of exemption granted to petitioner does not suffer from any illegality.

Sri Joga Rao, representing Sri P.B.Vijaya Kumar, learned counsel for the petitioner, submits that the exemption order is bad for non-application of mind. He submits that petitioner's husband applied for on 23.2.1978 for construction of permanent cinema theatre. The Joint Collector, Visakhapatnam granted permission vide proceedings dt.13.5.1979 subject to condition that construction of cinema theatre shall be completed within one year from the date of the order. However, the permission was revoked by order dt.27.11.1979, even before the expiry of one year. Therefore, petitioner's husband could not complete construction of cinema theatre within the time and it is not the fault of the petitioner's husband or petitioner.

The submission of the learned counsel for the petitioner is misconceived. The Joint Collector granted permission on 13.5.1979. However, by order dt.14.11.1979, it appears, the Vice-Chairman of VUDA informed the Joint Collector that the land, where cinema theatre is proposed, falls in the alignment of the proposed National Highway No.5 and G.N.T.Road Junction at Gajuawaka. Therefore, the Vice-Chairman of VUDA requested the Joint Collector to cancel the permission granted to petitioner's husband. The petitioner also approached the Government by way of appeal under the provisions of Andhra Pradesh Cinemas (Regulation) Act, 1955, and the Government by G.O.Ms.No.900, dt.5.6.1988 dismissed the appeal upholding the order of the revocation passed by the Joint Collector. In those circumstances, it was incumbent on the part of the petitioner or her husband to approach the Government and seek necessary clarification with regard to orders of exemption vide G.O.Ms.No.150, dt.23.1.1979. It appears the petitioner or her husband has not taken any such step. Therefore, when it was brought to the notice of the Government that the land was not utilized for the purpose for which it was exempted from the provisions of the Act, they issued notice dt.28.12.1991. The petitioner submitted explanation on 5.3.1992 admitting that she could not complete construction of cinema theatre and further requesting the Government to drop the matter. In view of the explanation, the Government came to the conclusion that the conditions imposed in G.O.Ms.No.150, dt.23.1.1979 are not complied with and accordingly passed orders withdrawing exemption granted earlier. This action of the Government is in accordance with sub-section (2) of Section 20 of the Act, which is to the effect that if the Government is satisfied that conditions, subject to which exemption under sub-section (1) of Section 20 is granted, are not complied with, it shall be competent for the State Government to withdraw exemption order. The only requirement is giving opportunity to the person making a representation against proposed withdrawal. In

this case, such requirement has been complied with and therefore there is no infirmity in the impugned Government Order.

The Writ Petition is wholly misconceived and therefore it is accordingly dismissed with costs.

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(V.V.S.RAO, J)

30.6.2004

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Secretary, Revenue (U.G.III),

Government of Andhra Pradesh,

Secretariat, Hyderabad.

2.The Special Officer and Competent Authority,

Urban Land Ceiling, Visakhapatnam.

3.2CCs to GP for Revenue, High Court Buildings, Hyderabad (OUT).

4.2CD copies

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